



Paper No. 5

DAVIS WRIGHT TREMAINE, LLP
2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

COPY MAILED**FEB 25 2003****OFFICE OF PETITIONS**

In re Application of
Tim Hui-Ming Huang
Application No. 10/081,327
Filed: February 21, 2002
Attorney Docket No. 40629-2

:
:
: DECISION ON PETITION
:
:

This is a decision on the "Petition to Accord Nonprovisional Application with a Filing Date" filed July 11, 2002 (certificate of mailing July 8, 2002). The application file was recently forwarded to the Office of Petitions for consideration of the petition.

Application papers in the above-identified application were filed on February 21, 2002. However, on May 8, 2002, the Office of Initial Patent Examination mailed applicants a "Notice of Omitted Item(s) in a Nonprovisional Application." Applicants were thereby notified that the application papers had been accorded a filing date; however, figures 12-57 described in the specification appeared to have been omitted. In addition, applicants were advised that the Office was unable to read all of the files on the compact disc submitted and a new duplicate set of discs was required.

In response, applicants timely filed the instant petition. With respect to figures 12-57, petitioner acknowledges that these figures were not included in the papers filed on February 21, 2002. Petitioner asserts that the subject matter of figures 12-57 was, and is, represented in the originally filed sequence listing of this continuation application. However, with respect to the compact discs, petitioner contends that the two compact disks and floppy diskette which contained the sequence listing were, in fact, provided on filing. Petitioner acknowledges, however, that the disks were not in PatentIn format, and states that they are submitting on petition two compact disks and one floppy diskette of the sequence listing in PatentIn 3.1 format.

As stated in the "Notice of Omitted Items," this application has been accorded a filing date of February 21, 2002. The mailing of a "Notice of Omitted Items," asserting that figures described in the specification appear to have been omitted from the application, permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept

the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, petitioner neither asserts that drawing sheets containing figures 12-57 were deposited on February 21, 2002, nor requests a later filing date based on later filing of the omitted drawings.

Accordingly, with respect to the figures, the petition is inappropriate and is subject to dismissal.

The compact discs submitted with the application on filing and the new compact discs submitted with the petition could not be read by the Office using a standard Office workstation. After further investigation it appears that the discs were unreadable on a standard Office workstation because they are not permanent, i.e., not closed and finalized. Compact discs are required to be "permanent." See 37 C.F.R. § 1.52(e)(2).

Thus, the "Notice of Omitted Items" was correct in stating that the Office was unable to read all of the files and in requiring a new duplicate set of discs. The Notice was properly mailed and will not be withdrawn.

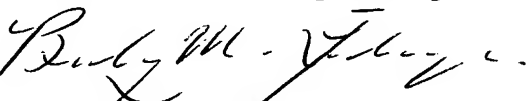
The petition is **DISMISSED**. The petition fee will not be refunded as the petition was not necessitated by any Office error.

In a telephone communication between Barry L. Davison, attorney for applicant, and Michael Lewis of the Office of Patent Legal Administration, USPTO, Mr. Davison agreed to file a new copy of the compact discs, wherein the compact discs would be finalized and closed. Michael Lewis compared the sequence on a compact disc filed December 19, 2002, with the sequence contained on the compact disc submitted with the application on filing and determined that they contain the same sequence.

The compact disc filed on December 19, 2002 has been entered into the record of the application.

The application with a filing date of February 21, 2002, is being returned to the Office of Initial Patent Examination for completion of preexamination processing.

Telephone inquiries related to this decision may be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions